THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.4588 of 2006

Date of Decision: 17 -10- 2006

Mahender Singh and others **.....Petitioners**

v.

Rameshwar and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Vijay Singh Kajla, Advocate
for the petitioners.

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P.S.PATWALIA, J. (Oral)

Civil Revision Nos.4588 and 4589 of 2006 have been filed challenging order dated 17.7.2006 whereby an application filed under Order VII Rule 11 CPC by the petitioners, defendants in the suit, was dismissed. For facility of reference facts are being taken from Civil Revision No.4588 of 2006. A reading of the order would show that it was the case of the defendants that the plaint was liable to be rejected on the ground that the civil Court had no jurisdiction to entertain the suit, plaintiffs were not owners in possession of the property and therefore had no locus standi to file the suit and that they had an equally efficacious remedy under Section 26 of the Haryana Ceiling on Land Holdings Act, 1972. The trial Court has rejected the application after noticing that these very pleas had been raised earlier when an application for interim injunction was considered and the learned Additional District Judge, Hisar vide order dated 5.5.2005 prima facie found no substance in these pleas. Thus the trial Court

concluded that the plaint under was not liable to be rejected Order VII Rule 11 CPC.

I have gone through the order passed by the learned Additional District Judge, Hisar while that Court was considering an application for interim injunction. Paras 15 to 17 of the said order read as hereunder:-

> "15. The legal position is not in dispute. In this case, a piquant situation has been created by the Prescribed Authority. The Prescribed Authority had to utilise such land of the appellant as was declared surplus but in this case the appellant as also his brother Ram Kumar proforma-respondent herein have been completely deprived of their entire land holding. Under the Act, it was not open to the respondents No.1 and 2 to render any proprietor altogether landless. The well-established tenets of natural justice have been catapulted away by the Prescribed Authority.
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> 16. The concept of reasonableness or non-arbitrariness pervades the entire scheme of our legal system and is a golden thread which runs through the whole fabric of our law. Arbitrary exercise of power is complete anti-thesis of rule of law. The absence of arbitrariness is a rule of law and rule of law is a content of social justice which in its terms is a basic feature of our Constitution which even the plenary power of the Parliament cannot reach to amend. In this case, despite opportunity, the respondents No.1 and 2 have not placed upon record copy of the order whereby land of the appellant was declared surplus. They have also not been able to show that the land was declared surplus after affording to the appellant an opportunity of being heard. A Full Bench of our own Hon'ble High Court has observed in State of Haryana and others Vs. Vinod Kumar and others Vol. LXXXIX-(1986-1) The Punjab Law Reporter 222

that an order declaring some land surplus is a nullity if the same is passed by a Tribunal of limited jurisdiction without issuing notice to the proprietors and in such circumstances, jurisdiction of the civil court is not ousted.

17. It is evident that the respondents have not acted in accordance with law and, therefore, the civil court has got jurisdiction and can intervene in the matter to settle the rights of the parties. In these circumstances, the learned Govt. Pleader cannot be allowed to urge with a show of justification that jurisdiction of the civil court is barred by Section 26 of the Act."

In view of the aforesaid observations it is quite clear that this is not a case where the plaint could have been rejected at the very threshold. Consequently, I find no error in the view taken by the trial Court. The revision petitions are therefore dismissed.

(P.S.PATWALIA)
JUDGE

October 17, 2006.

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